IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1361 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMJIBHAI JIVABHAI RABARI - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DJ BHATT for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2007

ORAL JUDGMENT

Rule. Shri Mengdey, ld. APP waives service of rule on behalf of the respondent State. With the consent of parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner, - original complainant has prayed for an appropriate order directing the respondent authority to transfer the investigation of C.R. No. I 129 of 2007 from Ghatlodiya Police Station to any other independent agency or any other higher authority.

3. It is the case of the petitioner that on 9-6-07 at about 12:30 p.m., an incident has taken place in which one Shri Shivnani, Police Inspector, his son and other persons are accused for the offence punishable u/s 323, 294-B, 506(1), 392 and 114 of the IPC. That the petitioner approached Ghatlodiya Police Station along with the relatives and friends for registration of the complaint. Upon hearing the petitioner, Shri MK Padhiyar, in charge Police Inspector, Ghatlodiya Police station called Police Inspector Shivnani and the complaint of the petitioner was not registered. It is the case of the petitioner that as the police authority was trying to register false case which was reflected from their talks, brother of the petitioner sent fax massage to high authority about the same at about 7:46 p.m. on 9-6-07. It is the case of the petitioner that the copy of the fax dated 9-6-07 was produced in the police station and thereby false complaint of Arvind Vataliya (son of the Police Inspector Vataliya) was registered against the friend and relatives of the petitioner being C.R. No. 128 of 2007 at about 21:45 hours on 9-6-07. It is the

case of the petitioner that said Police Inspector Shivnani gave slap to Jigar in the police station in presence of PSI Pathan, for which N.C. Complaint is filed which was also taken after 4 hours and 45 minutes of the incident. It is the case of the petitioner that after registering the complaint of other side, complaint of the petitioner was registered at about 22:45 on 9-6-07 and at that point of time all the five persons who are named as accused in the complaint of other side were present but not arrested. It is the case of the petitioner that PSI Pathan of Ghatlodiya Police Station filed affidavit before the Court in anticipatory bail proceeding that accused persons of the aforesaid FIR are absconding and thereby, the learned Sessions Court rejected the said application. It is the case of the petitioner that this Court granted anticipatory bail to the accused of C.R. No.128/07 and directed to remain present on 9-7-07. On 9-7-07, all the five persons remain present in the police station and the petitioner was also present but no arrest was made and police authority recorded statements in their own manner and not in the words of the accused. It is the case of the petitioner that till date nothing has been done in the complaint filed by the petitioner and no progress is made, on the contrary when on 9-7-07, the petitioner inquired and requested for steps in the complaint, Police Inspector Zala gave threats of dyer consequences and threaten that if the petitioner will insist for action, then arrest will be made and remand will be asked. It is the case of the petitioner

that the police authority is favouring the accused persons of aforesaid FIR as they are police officials, more particularly, Police Inspector Shivnani and no arrest is made in the complaint of the petitioner though the anticipatory bail application has been rejected by the learned Sessions Court. It is submitted that as the accused persons are the police officials and his relatives, the petitioner is apprehending that he will not get any justice as the complaint filed by the petitioner being C.R. No.I 129 of 2007 would not be inquired into in a fair manner and in a right direction and therefore, it is requested to hand over the investigation of complaint being C.R. No.I 129 of 2007 to the ACP as the petitioner has no faith in Ghatlodiya Police.

4. While opposing the present petition, Shri Mengdey, ld. APP under the instruction from one J.K. Jhala, Police Inspector of Ghatlodiya Police Station has submitted that the Investigating Officer is of the opinion that no case is made out for arrest against the accused persons and therefore, they are not arrested. It is submitted that the investigation is going on and therefore, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the parties.

6. At the outset, it is required to be noted that the complaint being C.R. No.I 129 of 2007 is against the Police Inspector Shivnani and his

relatives. Looking to the averments and allegations in the complaint as well as the averments in the petition, without further making any comments, this Court is of the firm opinion that it will be appropriate that the investigation of the said FIR being C.R. No.I 129 of 2007 registered with Ghatlodiya Police Station be handed over to the officer not below the rank of DCP. When the allegations are against the police officer, more particularly, Police Inspector, it is appropriate and advisable that the investigation be carried out by the officer superior and/or higher in rank to the accused persons, so as to avoid any further allegation of bias and/or mala fide. Justice is not to be done but is always seen to have been done. Under the circumstances and looking to the averments and allegations in the petition, it prima facie appears to the Court that there is some justification in the apprehension on behalf of the petitioner. Under the circumstances, without further making any comments upon the investigation carried out by the Investigating Officer of Ghatlodiya Police Station and in the facts and circumstances of the case and when the allegations are against the police officials, it will be appropriate to transfer the investigation of the aforesaid case to the superior officer higher in rank than the accused persons. Under the circumstances, investigation is to be transferred to the officer not below the rank of DCP.

7. For the reasons stated above, the petition

succeeds. The investigation of FIR being C.R. No.I 129 of 2007 registered with Ghatlodiya Police Station is directed to be transferred to concerned DCP zone, Ahmedabad to investigate the said FIR/ complaint and submit an appropriate report. The Commissioner of Police, Ahmedabad city is directed to immediately transfer the aforesaid complaint/ FIR to the concerned DCP, so as to enable the concerned DCP to complete the investigation as early as possible. Rule made absolute. DS permitted.

(M.R. Shah, J.)

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